



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 900

[AMS-DA-20-0044]

Procedural Requirements Governing Proceedings Pertaining to Marketing Agreements and Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting a final rule to amend the procedural regulations governing proceedings to formulate or amend Marketing Agreements and Marketing Orders. This final rule adopts a provision to allow the agency to utilize alternative procedures for conducting a rulemaking proceeding as outlined in a notice of hearing.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Erin Taylor, Acting Director, Order Formulation and Enforcement Division, Dairy Program, 202-720-7311, erin.taylor@usda.gov.

SUPPLEMENTARY INFORMATION: USDA is issuing this final rule to amend the procedural regulations governing proceedings pertaining to Marketing Agreements and Marketing Orders in 7 CFR 900 Subpart A. Those rules of practice and procedure are applicable to proceedings under the Agricultural Marketing Agreement Act of 1937, as amended (50 Stat. 246). For purposes of efficiency and modernization, and to provide flexibility to adapt procedures under unique circumstances, a provision allowing the notice of hearing to include alternative procedures is being added.

Executive Orders 12866, 13771, and 12988

This rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is not subject to the requirements of Executive Order 12866.

This rule is not an Executive Order 13771 regulatory action because it is exempt from the definition of “regulation” or “rule” in Executive Order 12866 and, thus, is not a regulatory action.

The rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. The rule will not preempt any state or local law, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Executive Order 13132

This rule has been reviewed in accordance with the requirements of Executive Order 13132, Federalism. The review reveals that this rule does not contain policies with federalism implications sufficient to warrant federalism consultation under Executive Order 13132.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on tribal governments and would not have significant tribal implications.

5 U.S.C. 553, 601, and 804

This final rule amends agency rules of practice and procedure. Under the Administrative Procedure Act, prior notice and opportunity for comment are not required for the promulgation of agency rules of practice and procedure. 5 U.S.C. 553(b)(3)(A). Additionally, only substantive

rules require publication 30 days prior to their effective date. 5 U.S.C. 553(d). Therefore, this final rule is effective upon publication in the Federal Register.

Furthermore, under 5 U.S.C. 804, this rule is not subject to congressional review under the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121. In addition, because prior notice and opportunity for comment are not required to be provided for this final rule, this rule is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Paperwork Reduction Act

This rule contains no information collections or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 900

General Regulations.

For the reasons stated in the preamble, the Agricultural Marketing Service amends the 7 CFR 900 Subpart A, as follows:

PART 900 – GENERAL REGULATIONS

Subpart A – Procedural Requirements Governing Proceedings Pertaining to Marketing Agreements and Marketing Orders

1. The authority citation for subpart A continues to read as follows:

Authority: 7 U.S.C. 610

2. Revise the heading of Subpart A to read as set forth above:
3. In § 900.4, revise paragraph (a) and add paragraph (d) to read as follows:

§ 900.4 Institution of proceeding.

(a) *Filing and contents of the notice of hearing.* The proceeding shall be instituted by filing the notice of hearing with the hearing clerk. The notice of hearing shall contain a reference to the authority under which the marketing agreement or marketing order is proposed; shall define the scope of the hearing as specifically as may be practicable; shall describe any alternative procedures established pursuant to paragraph (d) of this section; shall contain either the terms or substance of the proposed marketing agreement or marketing order or a description of the subjects and issues involved and shall state the industry, area, and class of persons to be regulated, the time and place of such hearing, and the place where copies of such proposed marketing agreement or marketing order may be obtained or examined. The time of the hearing shall not be less than 15 days after the date of publication of the notice in the **Federal Register**, as provided in this subpart, unless the Administrator shall determine that an emergency exists which requires a shorter period of notice, in which case the period of notice shall be that which the Administrator may determine to be reasonable in the circumstances: Provided, That, in the case of hearings on amendments to marketing agreements or marketing orders, the time of the hearing may be less than 15 days but shall not be less than 3 days after the date of publication of the notice in the **Federal Register**.

(d) *Alternative procedures.* The Administrator may establish alternative procedures for the proceeding that are in addition to or in lieu of one or more procedures in this subpart, provided that the procedures are consistent with 5 U.S.C. 556 and 557. The alternative procedures must be described in the notice of hearing, as required in paragraph (a) of this section.

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2. Amend § 900.8 by revising paragraph (b)(1) to read as follows:

§ 900.8 Conduct of the hearing.

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(b) * * * (1) *Right to appear.* At the hearing, any interested person shall be given an opportunity to appear, either in person or through his authorized counsel or representative, and to be heard with respect to matters relevant and material to the proceeding, provided that such interested person complies with any alternative procedures included in the hearing notice pursuant to § 900.4. Any interested person who desires to be heard in person at any hearing under these rules shall, before proceeding to testify, state his name, address, and occupation. If any such person is appearing through a counsel or representative, such person or such counsel or representative shall, before proceeding to testify or otherwise to participate in the hearing, state for the record the authority to act as such counsel or representative, and the names and addresses and occupations of such person and such counsel or representative. Any such person or such counsel or representative shall give such other information respecting his appearance as the judge may request.

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Bruce Summers

Administrator